Brief applied to classes

A G R

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1180.

THE DISTRICT OF COLUMBIA, PLAINTIFF,

vs.

LAWRENCE E. GANNON, DEFENDANT.

In Error to the Supreme Court of the District of Columbia.

MOTION TO ADVANCE BY THE PLAINTIFF IN ERROR.

A. G. RIDDLE,
For the District.

JUDD & DETWEILER, Printers.

exists in all cases where judgments are rendered against the District. It applies also to the Marshal of the District and all officials of the District who derive their authority from the laws of the United States and instead of the appeals being restricted so as to give relief to this court they will be multiplied.

Until some court shall have determined what Congress intended to cover by "an authority exercised under the United States" it may be a little unsafe to conjecture. There was a class of cases during the war where government officials, civil and military exercised authority in the name of the United States which was justified, if at all, only by the condition of war, and for which after the war many suits were brought. We should think it probable that cases of this kind were contemplated. But it is sufficient for our purposes that the case at bar, was not within the Statutes, without indicating what would be.

The liability of the District to actions such as this, is not an open question at all. It has been decided a great many times in the local courts of the District, and quite a number of times in this court in favor of the liability, and it does seem absurd to be making the question at this late day.

Barnes v. District of Columbia, 91, U. S., 540.

But in any event, if the District authorities wish to test the question in this court, they must wait until they have a case involving a sufficient amount to give jurisdiction to this court.

It seems to us that the writ of error in this case is so utterly without justification that it should be dismissed with the damages allowed by the 23rd Rule.

JOHN F. ENNIS,
S. S. HENKLE,
Att'ys for Def'ts in Error.

Brief Riddle to dismiss

A G R

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1180.

THE DISTRICT OF COLUMBIA, PLAINTIFF,

vs.

LAWRENCE E. GANNON, DEFENDANT.

In Error to the Supreme Court of the District of Columbia.

MOTION TO ADVANCE BY THE PLAINTIFF IN ERROR.

A. G. RIDDLE,
For the District.

JUDD & DETWEILER, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1180.

THE DISTRICT OF COLUMBIA, PLAINTIFF,

vs.

LAWRENCE E. GANNON, DEFENDANT.

In Error to the Supreme Court of the District of Columbia.

MOTION TO ADVANCE BY THE PLAINTIFF IN ERROR.

And now comes the plaintiff and moves the Court to advance this case, for the reason that the principal question involved in it, to wit, the alleged liability of the plaintiff, under *its existing form of government*, for alleged negligence in the care of a street, whereby the defendant claims to have been injured, is common to the large class of cases to which it belongs, many of which are now pending, involving large sums, is of the utmost importance to the District and to the United States, and has never been passed upon by this Court.

In support of this motion the plaintiff submits the following considerations and authorities, in brief herewith submitted.

A. G. RIDDLE,
For the Plaintiff.

First. As to the jurisdiction of this Court, and the defendant's motion to dismiss the writ of error, it is contended that the judgment being for $5,000, the plaintiff is without remedy in this Court on error.

The sole authority of the Commissioners of the District in the premises is by virtue of certain acts of Congress. Their appointments and commissions are from the President of the United States. All their powers are derived from acts of Congress. I contend that they are authorized to take charge of, improve, and control the streets, avenues, roads, and highways of the District, without liability on the part of the District for alleged abuse, misuse, or neglect of such authority by them.

This is called in question. It is alleged that the District, its people and their property, are directly liable for the use and exercise of this authority under the United States by the Commissioners.

Are not the people of the District authorized to have their property free from this liability?

Second. As to the major proposition, of which an early decision is sought—

It is known to the Court that after the civil organizations of the District, and till the act of February 21, 1871 (16 Stats., 419, and Rev. Stats. D. C., p. 2), took effect, there were three municipalities within the Territory on the northerly side of the Potomac; that these were merged in the District as a municipal government by the above statute. It may be borne in mind that these municipalities are unlike any known municipalities in this (like the people of the Territories), the inhabitants of the District can exercise no franchise of American citizenship, except as members of a municipal corporation. The municipality created by the act of February 21, 1871, was in effect abolished by the act of June 20, 1874 (18 Stats., 116), which created the commissional government. Congress was so well pleased with this its temporary expedient that by act of June 11, 1878, it

made that government permanent. (Supplement to Rev. Stats., 339.)

This but makes permanent the abolition of the real municipality. Whoever examines the act will see that the new government is a device whereby the United States, exercising its own immediate authority, governs the people of the District in its own interest without any right of interference on the part of the people whatever. Congress can alone legislate for the District. The President appoints its executive, and this or these appoint all the subordinates. Congress levies all taxes upon the property. When collected they are paid into its treasury, paid out by its appropriation, and all District disbursements are accounted for to its controller. The District is as much a sub-department of the United States Government as any agency in its civil service and in all its suits the United States is the real party in interest.

It is true that the statute perpetuating this state of things ironically declares: "The District of Columbia shall *remain* and *continue* a municipal corporation, as provided in section two of the Revised Statutes relating to said District." When it is remembered that there are no corporators, no council, no corporate officers, franchises, nothing but unrequited burdens, it is realized that this is the purest legal fiction ever perpetrated by an inventive legislative body—fictions of this class being usually the product of the courts.

Under this political and legal status of the people of the District and their property, how fares the question which I desire to submit to the court?

I made the question long ago in the District courts, but some change of jurisdictional conditions have thus far prevented its submission here.

My reference to authorities will be brief and conclusive.

It cannot be claimed that the District or people have any pecuniary right or interest in the streets under the care of the Commissioners, whose powers in the premises are defined by sec. 77, Rev. Stats., D. C. These are now vested in

them. The case of Weightman *vs.* The Corporation of Washington (1st Black, 39) would seem to be conclusive. That was a suit to recover for a personal injury caused by the falling of a bridge over Rock Creek. The duty to keep this in repair was specifically imposed on the corporation, by its charter—an act of Congress.

The question of ultimate legal liability was considered with care. Upon this point the court said:

> Whether the action in this case is maintainable against the defendant or not depends upon the terms and conditions of the charter, as is obvious from views already advanced. Which were: "When it appears from the several provisions of the charter that the burden was imposed *in consideration of the privileges granted and accepted, and the means to perform the duty are placed at the disposal of the corporation, or are within their control*, they are clearly liable to the public if they unreasonably neglect to comply with the requirement of the charter."

The court speaking of the defendant corporation really speaks of the corporators as "they" and "them," for they use their powers and exercise their franchise.

It goes on:

> "In view of the several provisions of the charter, not a doubt is entertained that the burden of repairing or rebuilding the bridge was imposed upon the defendants *in consideration of the privileges and immunities conferred by the charter.* Most ample means, also, are placed at the disposal of the defendants or within their control to enable them to perform the duty enjoined.
>
> "On this one point it would seem there can be none (no doubt), as the defendants have very large powers to levy and collect taxes on almost every description of property, real and personal, as well as on stocks and bonds and mortgages, and they derive means for granting licenses," &c.

Thus, then, the duty to the corporation flows from the available use of powers and franchises.

What can be said of this liability on the part of a people who have no rights, powers, or franchises as a consideration? Had this people surrendered their corporate powers and franchises, and elected to take the present government some show might be made possibly; that the contributions of Congress, its government and legislation, took the place of their own thus given up, and so this old liability continues. There is no foundation for this, nor is there any foundation for holding the commissional government responsible for this class of cases. They exercise a share of constituted power, for public purposes, in the same way as do the commissioners and supervisors of counties, the trustees of townships, out of which no causes of action can arise.

This distinction is remembered in the later case of *Barnes* vs. *The District* (91 U. S., 540). That was decided by a divided court, and arose during the existence of the late District government, when the people had larger powers than ever before, and in which some of the justices dissented for the reason that the people should not be held responsible for the acts of officers in whose appointment they had no voice—to which I add—and whom they could not call to account. That case is not applicable to this as against the District.

As quite the end of argument as of authority, I cite the very satisfactory case of *Hill* vs. *The City of Boston*—a masterly review of all the cases, and which may be confidently relied on—122 Mass., 344.

A. G. RIDDLE,
For the District.